

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4959

IN THE MATTER OF:

Served October 24, 1996

Application of WE CARE PROJECT)
INC. and VOCA CORPORATION OF)
WASHINGTON, D.C., for Approval)
Pursuant to the Compact, Article)
XII, Section 3)

Case No. AP-96-47

By application filed August 8, 1996, WMATC Carrier No. 324 and WMATC Carrier No. 342 seek Commission approval of a management agreement pursuant to Article XII, Section 3(a), of the Compact.

While this application was pending, Carrier No. 324 changed its name from We Care Project Inc. (We Care), to Individual Development, Inc. (IDI). We approved the name change in Order No. 4952.¹ Carrier No. 342 is VOCA Corporation of Washington, D.C. (VOCA).

Notice of this application was served on September 3, 1996, in Order No. 4919. Applicants were directed to publish further notice in a newspaper and file an affidavit of publication and a statement addressing the effect of the agreement on competition, the riding public and the interests of affected employees. Applicants complied. The application is unopposed.

TERMS OF THE AGREEMENT

Under the agreement, VOCA consents to manage the operations of We Care/IDI, including We Care/IDI's transportation operations, for a period of one year commencing April 23, 1996. The pertinent terms are as follows.

VOCA shall act as WeCare's program manager and administrator, and in such capacity, subject to the oversight of the Board Of Trustees of WeCare . . . VOCA shall:

. . . .

- (F) Provide to WeCare monthly financial statements and other similar information as reasonably requested by WeCare. VOCA shall retain all documents supporting disbursements and collections made to the extent required by the appropriate Medicaid contracts.

¹ In re We Care Project Inc./Individual Development, Inc., No. AP-96-57, Order No. 4952 (Oct. 22, 1996).

(G) Cause to be hired, discharged, paid and supervised, any and all persons including professionals, firms, corporations and/or employees who are deemed necessary by VOCA to be employed, hired, discharged and/or supervised in order to provide the services outlined herein, in accordance with the policies and procedures established by WeCare or the directions of the Board of Trustees of WeCare. . . .

. . . .

(L) Enter into and perform any and all contracts, agreements, and/or other arrangements with any other persons, firms, corporation, and/or other organizations, whether affiliated with VOCA or not, for the general management, operation, and provision of the services provided hereunder; PROVIDED, HOWEVER that contracts between WeCare and affiliates of VOCA shall not take effect until approved by the Board of Trustees of WeCare.

(M) Have any and all other rights and authorities, not specifically enumerated herein, reasonably required to make any and all contracts and disbursements, to incur obligations and to do any and all other things, reasonably necessary, proper and/or required of it to carry out the rights, duties, responsibilities, authorities delegated to and/or conferred and/or imposed upon VOCA under this Agreement, excluding contracts for the leasing of furniture, equipment, motor vehicles, or real property and contracts for these management services, which shall require approval by the Board of Trustees . . . at the next regular meeting or special meeting following the submission of these contracts to the Board of Trustees.

Agreement, § III (titled "Duties and Authority of VOCA") (emphasis added).

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between WeCare and VOCA. Except as to the rights, powers and authorities granted to VOCA herein, any grant of additional authority by WeCare to VOCA shall be pursuant to express resolution of the WeCare Board of Trustees, and any acts or action taken pursuant to the authorities granted herein or such additional authority shall be in the name of WeCare, "by VOCA Corporation of Washington, D.C., Facility Manager" or in such other manner authorized by the Board of Trustees to disclose the authority or agency of VOCA. . . .

During the performance of services hereunder, the relationship of VOCA to WeCare shall be that of independent contractor. In such regard, WeCare agrees that VOCA has the authority to determine the methods and details to achieve the mutual goals to provide the best care and service possible for the residents of the Facilities subject to the overall authority of WeCare to determine the final product and result of such services.

Agreement, § IV (titled "Legal Relationship of Parties") (emphasis added).

Except in cases where there has been a final and binding adjudication or other determination not subject to further appeal or other review finding fraud, willful malfeasance or gross negligence by VOCA, WeCare shall indemnify and hold VOCA harmless from and against, and shall on demand reimburse VOCA for, all claims, actions, judgments, damages, expenses and other liabilities, including without limitation reasonable attorneys fees, asserted against or incurred by VOCA and arising from any actions or omissions by VOCA or its, employees, agents or other representatives performing functions in relation to the Facilities in connection with the performance by VOCA under this Agreement.

Agreement, § XI (titled "Miscellaneous").

DISCUSSION AND CONCLUSION

Under Article XII, Section 3, Subsections (a)(ii) and (c), the Commission may approve the contract of one carrier to operate a substantial part of the property or franchise of another carrier if the contract is consistent with the public interest. The public interest analysis focuses on the managing party's fitness, the resulting competitive balance and the interests of affected employees.²

The public interest favors approval. First, as an existing WMATC carrier, VOCA is entitled to a presumption of fitness.³ Second,

² In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd., & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996). The "public benefit" inquiry was eliminated by Order No. 4926 as an element of the public interest analysis after this application was filed. We apply current law to pending applications. In re Capital City Limo., Inc., & Capital City Transp., Inc., No. AP-96-28, Order No. 4927 (Sept. 12, 1996).

³ In re Regency Servs., Inc., & Carey Limo. D.C., Inc., No. AP-95-39, Order No. 4689 (Nov. 2, 1995).

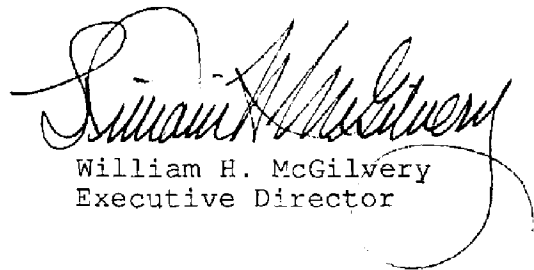
applicants state that each carrier will remain a separate entity, and any action taken by VOCA as manager will be subject to review and approval by We Care/IDI's board of trustees. The terms of the agreement support this construction of the parties' relationship, and thus, support a finding of no adverse impact on competition. Third, inasmuch as applicants state that implementation of the management agreement will not change the employment status of We Care/IDI's employees, there should be no adverse impact on those employees. The Commission, therefore, finds that the proposed management agreement is consistent with the public interest.

Normally, at this point, VOCA, as the carrier acquiring control, would be required to file various documents completing transfer of control for regulatory purposes -- principally, new contract tariffs in VOCA's name and an affidavit confirming that VOCA's name and carrier number have been placed on the exterior of the affected vehicles, informing the public that VOCA is the operator. However, it is clear from the contract provisions listed above that We Care/IDI has retained significant control over transportation performed under its Medicaid contracts. The contracts will continue to be in the name of We Care/IDI, and the transportation will continue to be performed in We Care/IDI's vehicles, as operated by We Care/IDI's employees and as insured in We Care/IDI's name. Thus, from the perspective of Medicaid officials and program participants, the entity providing transportation will continue to be We Care/IDI. Accordingly, we will not direct VOCA to file replacement contract tariffs in its name, and We Care/IDI's vehicles should continue to display WMATC No. 324 only.

Each carrier is admonished to keep its assets, books and operations completely separate from the other's. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.⁴

THEREFORE, IT IS ORDERED that the management agreement between VOCA and We Care/IDI is hereby approved.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON AND MILLER:



William H. McGilvery
Executive Director

⁴ In re Capital City Transp. Co., No. AP-95-10, Order No. 4553 (Mar. 31, 1995).